



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant March 02, 2023 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 24, 2023 (the “Notice”)
- For compensation for monetary loss or other money owed
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing with K.Z. to assist (the “Tenants”). Landlord D.D. appeared at the hearing with Q.D. to assist (the “Landlords”). I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

I removed parties named on the Application who are not parties to the tenancy agreement.

The Tenant continued to have possession of the keys to the rental unit. The Landlords sought an Order of Possession for the rental unit.

I dismissed the requests for compensation for monetary loss or other money owed and an order that the Landlord comply with the Act, regulation and/or the tenancy agreement with leave to re-apply under rule 2.3 of the Rules. The Tenant should note that the RTB

can only decide monetary claims up to \$35,000.00 unless an amount sought is a legislated amount.

The Tenant provided evidence before the hearing. The Landlords did not provide evidence before the hearing. I went over service of the hearing package and Tenant's evidence.

The Landlords confirmed receipt of the hearing package. The Landlords said they did not receive the Tenant's evidence. The Tenants said they did not serve the Tenant's evidence on the Landlords. I heard the parties on whether the Tenant's evidence should be admitted or excluded. Under rule 3.17 of the Rules, I excluded the Tenant's evidence because I found it would be unfair to consider it when the Landlords did not know the Tenant was going to rely on it and could not respond to it. I admitted the Notice and written tenancy agreement given the nature of these documents.

The Tenants asked to adjourn the hearing to serve the Tenant's evidence on the Landlords. The Landlords did not agree to an adjournment. I considered rule 7.9 of the Rules and denied an adjournment because it was up to the Tenant to know they had to serve their evidence on the Landlords before the hearing and because I found it would be extremely prejudicial to the Landlords to adjourn the hearing which is about whether this tenancy will continue or end.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Notice, written tenancy agreement and all testimony and verbal submissions of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, are the Landlords entitled to an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was provided and the parties agreed it is accurate. The tenancy started October 15, 2022. Rent is \$3,000.00 per month due on the 15th day of each month.

The Notice was provided. The Notice states that the Tenant failed to pay \$3,000.00 in rent due February 15, 2023. The Notice has an effective date of March 05, 2023. The Tenants did not raise an issue with the form or content of the Notice when asked.

The Landlords said the Notice was posted to the door of the rental unit. The Landlords could not remember when this was done. The Tenants said the Notice was received by text message March 04, 2023. The Tenant disputed the Notice March 06, 2023.

The Landlords said the Tenant did not pay rent for February and this is the reason for the Notice. The Tenants agreed the Tenant did not pay February rent.

I noted that the Tenant paid a \$3,000.00 security deposit. The Landlords said the security deposit was \$3,000.00 because the rental unit is furnished.

I told the Tenants the remaining five reasons tenants can not pay rent under the *Residential Tenancy Act* (the "Act") and asked if these applied. The Tenants said the Landlords agreed to the Tenant not paying February rent. The Tenants said the parties agreed in a February 12, 2023 text message conversation that the Landlords would return the security deposit and give the Tenant one month of free rent if the Tenant moved out by March 15, 2023. Throughout the hearing, the Tenant took the position that they moved out of the rental unit March 15, 2023. The Tenant agreed they have not returned the rental unit keys to the Landlords. The Tenants also said the Landlords later changed their mind about the agreement in the text message conversation.

The Landlords said they did not agree to the Tenant not paying rent as claimed.

The parties agreed the Tenant has not paid rent since being issued the Notice. The Tenants again said the Landlords agreed to them not paying rent.

Analysis

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;

3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

Based on the written tenancy agreement, I accept the Tenant had to pay \$3,000.00 in rent per month by the 15th day of each month under the agreement. Given this, the Tenant had to pay the following:

- January 15 – February 15, 2023 - \$3,000.00 due January 15th
- February 15 – March 15, 2023 - \$3,000.00 due February 15th
- March 15, 2023 – April 15, 2023 - \$3,000.00 due March 15th

The parties agreed the Tenant did not pay rent for February 15 – March 15, 2023.

The Landlords charged a \$3,000.00 security deposit which is not allowed by section 19(1) of the *Act*. It does not matter that the rental unit is furnished. The Landlords cannot charge more than half a month's rent for a security deposit and cannot charge a separate furniture deposit. Under section 19(2) of the *Act*, the Tenant was allowed to deduct \$1,500.00 from rent.

The Tenant still did not pay the remaining \$1,500.00 in rent owing for February 15 – March 15, 2023. The parties disagree about whether the Landlords agreed to the Tenant not paying this rent. The Tenant has failed to prove the agreement between the parties because there is no further evidence before me to support the Tenant's version of events. In the circumstances, I do not accept that the Tenant was allowed to withhold rent based on an agreement with the Landlords.

Further, even if I had accepted that the parties came to the agreement stated by the Tenants, that the Tenant could have one month of free rent if they moved out by March 15, 2023, the Tenant did not move out March 15, 2023, and did not comply with their part of the agreement.

The Tenants continued to argue throughout the hearing that the Tenant moved out of the rental unit March 15, 2023. The Tenant agreed they had not returned the keys to the rental unit to the Landlords. Further, possession of the rental unit was still at issue during the hearing on March 30, 2023. The Tenants did not submit that the Tenant had given up possession of the rental unit or that the Landlords could simply enter and take back possession of the rental unit. In the circumstances, I do not accept that the Tenant can be considered to have moved out of the rental unit March 15, 2023.

Given the Tenant did not move out of the rental unit March 15, 2023, the Tenant was not entitled to not pay rent based on the alleged agreement with the Landlords. The alleged agreement was conditional on the Tenant moving out of the rental unit March 15, 2023, and the Tenant did not do so.

Further, it does not make sense that the Tenants would argue the Tenant moved out of the rental unit March 15, 2023, but still proceed with the dispute of the Notice March 30, 2023. The dispute of the Notice is about whether the tenancy should continue or end. If the Tenant had moved out and given up possession of the rental unit March 15, 2023, there would have been no reason for the Tenant to proceed with their dispute of the Notice.

As well, I note that the Notice was issued between February 24, 2023, and March 04, 2023, prior to the March 15, 2023, date stated by the Tenants. This shows that the Landlords expected rent to be paid February 15th for the period February 15 – March 15, 2023, contrary to the alleged agreement between the parties.

I find there was no enforceable agreement between the parties that the Tenant did not have to pay rent for February 15 – March 15, 2023.

Given the above, I find the Tenant had to pay \$1,500.00 in rent on February 15, 2023, for the period February 15 – March 15, 2023, under the tenancy agreement and that the Tenant did not have authority under the *Act* to withhold this rent.

Given the Tenant did not pay \$1,500.00 in rent due February 15th, the Landlords were allowed to serve the Notice. I accept the Tenants' testimony that the Notice was received March 04, 2023, because the Landlords did not provide convincing evidence otherwise.

The Notice complies with the form and content requirements in the *Act*. I acknowledge it says \$3,000.00 in rent was outstanding and I have found \$1,500.00 was outstanding; however, this does not invalidate the Notice. The Notice is valid as long as there was some rent outstanding when it was issued.

The Tenant had five days from receipt of the Notice to pay the \$1,500.00 in outstanding rent or dispute the Notice.

I find the Tenant did not pay the outstanding rent because the parties agreed the Tenant has not paid rent since being issued the Notice.

The Tenant disputed the Notice March 06, 2023, in time. However, the Tenant has not provided a valid basis for disputing the Notice for the reasons outlined. The Tenant's dispute of the Notice is dismissed without leave to re-apply.

Section 55 of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The Landlords are entitled to an Order of Possession under section 55(1) of the *Act*. The Order of Possession is effective two days after service on the Tenant.

I find the Tenant owes the Landlords:

- \$1,500.00 for February 15, 2023 – March 15, 2023
- \$1,500.00 for March 15, 2021 – March 31, 2023

The Landlords are issued a Monetary Order for \$3,000.00 under section 55(1.1) of the *Act*.

If the Tenant does not give possession of the rental unit back to the Landlords in accordance with this Decision, the Landlords can seek further monies owing through the RTB.

The Tenant is not entitled to recover the filing fee because they have not been successful in the Application.

Conclusion

The Landlords are issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the BC Supreme Court as an order of that Court.

The Landlords are issued a Monetary Order in the amount of \$3,000.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the BC Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 31, 2023

Residential Tenancy Branch